IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 49 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

NEW INDIA INDUSTRIES LTD

Appearance:

MR AKIL KURESHI FOR MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 28/08/2000

ORAL JUDGEMENT (Per D.M. DHARMADHIKARI, C.J.)

1. The following question of law has been referred:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and in coming to the conclusion that the sum of Rs.5,93,756 paid by the assessee on exchange rate difference was allowable as a revenue expenditure?"

2. Learned counsel for the assessee has relied upon a decision of this Court in case of the same assessee, i.e., New India Assurance Company Limited v. CIT reported in (1999) 152 CTR 4. By relying on the decision of the Supreme Court in Sutlej Cotton Mills Ltd. Vs. CIT 1978 CTR (SC) 155 : (1979) 116 ITR 1 as followed by this Court in CIT vs. Windsor Industries (1998) 146 CTR (Guj) 207, it has been held that the loss arising out of foreign exchange rate fluctuation requiring payment of additional sum is not loss or expenditure of revenue nature but of capital nature and is not allowable as a deduction.

3. The facts of this case show that the amount of Rs. 5,93,756/- was paid as exchange rate difference for purchase of plant and machinery by the assessee. It is therefore held to be an expenditure of capital nature.

4. As a result, the question referred is answered against the assessee and in favour of the revenue.

There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

[sndevu]